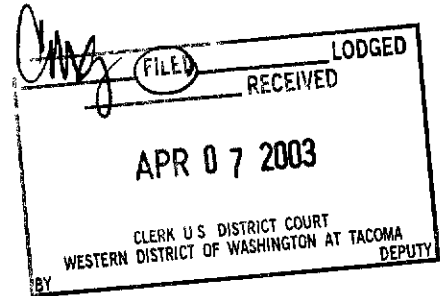


HONORABLE RONALD B LEIGHTON



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CORY THOMAS, et al ,)	NO C01-5138 (RJB)RBL
)	
Plaintiffs,)	PLAINTIFFS' TRIAL BRIEF
)	REGARDING ADMISSIBILITY OF
vs)	POLICE OFFICERS' MISCONDUCT
)	TO SHOW BIAS
CITY OF TACOMA, et al ,)	
)	
Defendants)	

Come Now the Plaintiffs and submit the following trial brief regarding the
admissibility of police officers' misconduct to show bias

I Bias is a Permissible Basis for Impeachment

It is without question that a party may introduce evidence of a witness's bias in
order to impeach the witness *United States v Abel*, 469 45, 50-51, 105 S Ct 465, 83
L ed 2d 450 (1984), Joseph M McLaughlin, Weinstein's Federal Evidence, Vol 4,
§607 04[1], pp 607-19 (2d ed 2002)

Impeachment by showing the witness to be biased rests on two assumptions
(1) that certain relationships and circumstances impair the impartiality of a
witness, and (2) that a witness who is not impartial may, consciously or
otherwise, shade his or her testimony in favor of or against a party Since
bias of a witness is *always* significant in assessing credibility, the trier of
fact *must* be sufficiently informed of the underlying relationships,



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1 circumstances, and influences operating on the witness to determine whether
2 a modification of testimony reasonably could be expected as a probable
human reaction

3 Courts are therefore liberal in accepting testimony relevant to a showing of
4 bias. Bias is never classified as a collateral matter lying beyond the scope of
5 inquiry, or as a matter on which an examiner is required to take a witness's
answer

6 Weinstein's Federal Evidence, *supra*, at 607-19 – 607-21 (internal cites omitted)

7
8 II The Tacoma Police Officers' Misconduct against Plaintiffs is Admissible to
9 Show their Bias against Plaintiffs

10 It has long been held that evidence of police brutality is admissible, both on cross-
11 examination and through extrinsic evidence, to show that the police officer's testimony is
12 biased. See *Blair v. United States*, 401 F.2d 387 (D.C. Cir. 1968), see also *Commonwealth*
13 *v. Hall*, 736 N.E.2d 425 (2000)

14 In *Blair*, two defendants, Blair and Suggs, who were convicted of robbery charges
15 (among other things), appealed their convictions based on the trial court's exclusion of
16 evidence of the arresting police officers' physical brutality against them.¹ *Blair* at 389
17 The court cited treatises and several other cases holding: "It is of course clear that the
18 range of evidence that may be elicited for the purposes of establishing bias of a witness is
19 quite broad and that accordingly evidence of police brutality is admissible for such
20 purposes." *Blair* at 389. The court held that in the Suggs retrial, the trial court should
21 admit the evidence of police brutality for establishing bias. *Id.* at 390. The court based its
22 ruling on three facts: that Suggs was able to testify about specific facts of brutality, (2)
23 that there was physical evidence of brutality, and (3) that the United States' primary
24
25
26

¹ Suggs also challenged the trial court's admitting Suggs' statements made while in police custody when the officers failed to give Suggs his *Miranda* warnings.

1 witnesses were the police officers alleged of brutality *Id* Since the primary witnesses for
2 the United States were police officers, their credibility was of extreme importance, so
3 evidence which may reveal bias should be admitted

4 In *Commonwealth v Hall, supra*, the appellate court of Massachusetts overturned a
5 drug trafficking conviction against the defendant because the trial court refused to admit
6 evidence of police brutality, which the defendant attempted to introduce to show police
7 bias *Id* at 427 The defendant attempted to introduce evidence that the arresting police
8 officers used excessive force after the defendant was handcuffed, but the trial court refused
9 to admit the evidence finding that it was a collateral matter *Id* The appellate court held
10 that such a refusal was reversible error because “[e]vidence of bias is almost never a
11 collateral matter”, *Id* at 429 The court held that once the defendant made a “plausible
12 showing that the circumstances existed on which the alleged bias is based,” the evidence
13 should have been introduced *Id* The prosecution relied on police witnesses who testified
14 that the defendant threw the drugs from the car, that nobody other than the defendant left
15 the vehicle, and that the defendant resisted arrest when he was detained *Id* at 429 The
16 defendant’s witnesses testified that there was another person in the vehicle who fled the
17 vehicle, that that person must have thrown the drugs out of the vehicle, and that the
18 defendant exited the vehicle with his hands up, fully compliant *Id* at 429-30 As such,
19 the appellate court in *Hall*, as in *Blair*, found that the case “hinged on the credibility of the
20 witnesses”, so the evidence of the alleged police misconduct was extremely important

24 Possible bias of police witnesses was an important question in this case
25 All nine prosecution witnesses were members of the narcotics division of
26 the Springfield police department If brutality had occurred, they would
have had a motive to cover up the beating to protect themselves or their
fellow officers

1 *Hall* at 429, citing *Commonwealth v Maffei*, 471 N.E 2d 1364 (1984)

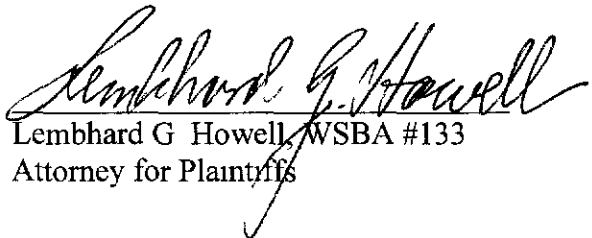
2 In our case, in each incident, the police officers' account of the events is in stark
3 contrast with the plaintiffs and their witnesses' account of events Therefore, the
4 credibility of the witnesses and parties are central to the case Plaintiffs intend to introduce
5 into evidence several incidents of police brutality and other police misconduct against
6 plaintiffs, all of which the defendants have notice of

7
8 These incidents reveal that the defendants and their fellow police officers' have a
9 motive to lie in order to cover up their misconduct and that of their fellow officers See
10 *Blair, supra, see Hall, supra* Plaintiffs' counsel should be able to cross-examine the
11 officers regarding these incidents to show their bias. If the officer denies that the incident
12 occurred, plaintiffs should then be allowed to admit extrinsic evidence of the officers'
13 brutality and other misconduct

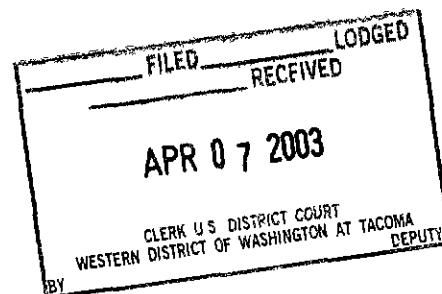
14 Dated this 7th day of April, 2003

15
16 Respectfully submitted,

17 Law Offices of Lembhard G Howell, P S

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19 Lembhard G Howell, WSBA #133
20 Attorney for Plaintiffs
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HON RONALD B LEIGHTON



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CORY L THOMAS, ABDULLAH ALI,
MUHAMMAD ALEXANDER, and ISMAIL
RAHMAAN,

Plaintiffs,

NO C01-5138RJB

vs

DECLARATION OF SERVICE

CITY OF TACOMA, a municipal corporation,
TACOMA POLICE DEPARTMENT, BRIAN
EBERSOLE, JAMES O HAIRSTON, RAY
CORPUZ, KRISTI BUCKLIN, et al ,

Defendants

Adrienne Zouad states and declares:

I am a citizen of the United States of America, over the age of 21 years, and competent to be
a witness herein.

That on the 7th day of April, 2003 I deposited with ABC Legal Messengers copies of the
following documents in the above-captioned case

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5 This declaration

With instructions to deliver said documents on the same business day to

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct Executed at Seattle, Washington this 7th day of April, 2003

LEMBHARD G HOWELL, P S
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Seattle, WA 98104
(206) 623-5296